

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the  
Insurance Agent License  
of Brent Allan Ecklund,  
License No. IN9007642

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on May 19, 20 and 21, 1992, at the Office of Administrative Hearings in Minneapolis, Minnesota. The record on this matter closed on July 9, 1992, the date of receipt of the last post-hearing brief.

Deborah J. Kohler, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant, Minnesota Department of Commerce. Clarence E. Hagglund and Britton D. Weimer, Attorneys at Law, Hagglund Law Firm, P.A., 504 Wirth Park Office Center, 4000 Olson Memorial Highway, Minneapolis, Minnesota 55422, appeared on behalf of the Respondent-Licensee, Brent Allan Ecklund.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether Brent A. Ecklund engaged in conduct which violated Minn. Stat. 60A.17, subd. 1a(e); subd. 6c(a)(2), (3), (6) and (9); 72A.20, subds. I and 18; and Minn. Rule 2795.1000 (1991).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Brent Allan Ecklund is a 30-year-old male who is married, has two children, and currently resides in Brooklyn Park, Minnesota. Mr. Ecklund worked at many different jobs before his initial exposure to the insurance industry in mid-1985. Sometime in June of 1985, Mr. Ecklund met with Mel Hartman, a district sales manager for American Family Insurance Company, concerning a job working for American Family as an insurance agent. In early

July of 1985, Mr. Ecklund began employment as an agent-trainee for American Family. In late July, Ecklund took and passed the state licensure exam to become licensed as an insurance agent.

2. On September 30, 1985, Brent Ecklund signed an agent's agreement with American Family Insurance Company which appointed him as an agent authorized to do business on their behalf. Paragraph 6.g. of that agreement specifically provided that, "This agreement may be terminated by either party with or without cause by giving written notice to the other and shall be deemed terminated as of the date specified in such notice . . . ." Mr. Ecklund began his duties as an insurance agent immediately after the agreement was signed pursuant to Mr. Hartman's directive which included the solicitation and writing of insurance applications. Mr. Ecklund was not issued his insurance agent's license by the State of Minnesota until October 8, 1985, however.

3. Mr. Ecklund remained employed by American Family until July 15 of 1988 when he was notified, in writing, by Mel Hartman that he was terminated as of that date. Subsequent to the termination, American Family commenced an action against Mr. Ecklund by way of a complaint dated June 28, 1990. The complaint alleged, inter alia, that Mr. Ecklund had breached his fiduciary duty to American Family ". . . by arranging to have renewal notices with unjustified rate increases sent to American Family insureds. This was accomplished by altering American Family's computer files." This lawsuit was submitted to arbitration which resulted in an award for American Family in the amount of \$20,000 "based on breach of fiduciary duty." The arbitrator made no findings of fact to support her award and conclusion that there had been a "breach of fiduciary duty". This arbitration award, filed October 4, 1991, was not appealed by either party. The factual basis for the award, as shown in the record herein, is set forth in the next finding. Mr. Ecklund did not inform the Department of Commerce of the commencement of this action against him.

4. Sometime in early 1988, Mr. Hartman met with Brent Ecklund and other American Family agents concerning the need to review, and change if necessary, mileage classification codes for clients' automobile insurance policies as a way to increase revenue for the company and agent. If, after a review, the

agent determined that the client was driving more miles on an annual basis or to and from work than the current classification reflected, a higher classification was assigned, resulting in a greater premium. Subsequent to these discussions, Mr. Ecklund engaged in a review of his clients' automobile policies, specifically with respect to the mileage classification. Over a 60-day period, May and June of 1988, approximately 60% of Ecklund's clients' automobile insurance policies were amended in some respect by a change in a rating classification. In order to make classification changes, access to Ecklund's agency computer was required. Access codes to these computers were known only to the agent and his or her staff. After Mr. Hartman became aware of the abnormal number of policy changes to the casualty insurance written by Ecklund, he engaged in an investigation of the appropriateness of all of the changes made. The record in this case shows three policy reviews that were done by American Family in late September of 1988. In each of these cases, the "reviewer" changed the mileage classification for the policyholder because he determined that a change previously made to the policy was not correct.

5. Subsequent to Mr. Ecklund's termination by American Family, he entered into a partnership with two other insurance agents, Rick Aune and Mike Jensen, to form Insure America of Minnesota, Inc. in July of 1989. Based, in part, on information supplied by Mel Hartman, the Minnesota Commerce Department started disciplinary proceedings against Mr. Ecklund. In September

of 1990, Brent Ecklund agreed to a 90-day suspension of his license commencing October 1, 1990 and ending December 31, 1990. During the period of suspension, Mr. Ecklund did not even enter the premises of Insure America and he obtained other non-insurance related employment through the end of December 1990. When Mr. Ecklund returned to Insure America in early 1991, he was told by Mr. Aune that he was no longer welcome to work there. Mr. Aune essentially kicked Mr. Ecklund out of Insure America and denied Ecklund access to his personal agency files. There is currently litigation pending between Mr. Ecklund, Mr. Aune and Insure America resulting from this "dissolution".

6. When Brent Ecklund first became employed by American Family, he was provided with a Wisconsin insurance agent's license by the Madison office of the company. Mr. Ecklund thought that, after he left American Family, the Wisconsin license had lapsed. However, he was contacted by the Wisconsin Commissioner of Insurance in mid-1991 concerning the fact that he had not reported his Minnesota suspension to the State of Wisconsin. At that time, Mr. Ecklund still had an active Wisconsin license. Mr. Ecklund signed a stipulation with the Wisconsin Commissioner of Insurance dated July 17, 1991 pursuant to which Ecklund surrendered his insurance agent license and agreed to not apply for another license in Wisconsin until June 1, 1993. The Department of Commerce was not informed of this action by Mr. Ecklund.

7. Subsequent to leaving Insure America of Minnesota, Inc., Brent Ecklund went to work for another insurance agency, Workman & Associates, located in Minneapolis, Minnesota. Mr. Ecklund has maintained his employment with Workman through the date of the hearing.

#### JEFF AND-GIOVANNI CERISE

8. Brent Ecklund met Jeff Cerise in approximately 1985 and wrote car insurance for him. From 1989 through April 2, 1990, Mr. Ecklund insured the Cerises' 1985 Honda Accord and 1962 Studebaker Lark through General Accident Insurance Company. The Cerises were satisfied with the automobile insurance coverage and service provided by Brent Ecklund. In early 1990, Mr. Ecklund informed the Cerises that he had received a communication from General Accident informing him that they were no longer interested in insuring older model cars (the 1962 Studebaker Lark) at "stated amount" coverage. Consequently, Mr. Cerise asked Ecklund about other insurance companies and Ecklund informed him that he could get the Cerises a better rate with another company. Based on that information, the Cerises cancelled their automobile insurance with General Accident effective April 2, 1990, the date of renewal of the General Accident policy.

9. Brent Ecklund submitted an automobile insurance application to American States Insurance Company on behalf of the Cerises which included a binder effective April 22, 1990. The date on the application is April 2, 1990 and the applicant's signature is dated March 25, 1990. This created a gap in the Cerises' automobile insurance from April 2, 1990 through April 22, 1990.

1None of the allegations that formed the basis for the suspension are the

basis for the action herein.

10. In mid-May 1990, American States sent a notice of cancellation, effective May 21, 1990, to Mr. Ecklund and the Cerises. The reasons for the cancellation were three traffic tickets issued to Giovanni and one traffic ticket issued to Jeff. The application for insurance lists Jeff's ticket but only two for Giovanni.

11. On March 27, 1990, Jeff Cerise got a second speeding ticket and called Mr. Ecklund the day after to inform him. This ticket, in addition to the one of Giovanni's, was not included on the American States insurance application.

12. In late May 1990, Brent Ecklund submitted an automobile insurance application to Commercial Union and issued a binder effective May 21, 1990. This application included the three tickets issued to Giovanni and the older speeding ticket issued to Jeff, but not the March 1990 ticket. In addition, Mr. Ecklund checked "no" to the question of whether any insurance application or policy had been declined, cancelled or non-renewed in the last three years on the application form.

13. Commercial Union cancelled the Cerises' automobile insurance effective July 14, 1990 due to Jeff's two speeding convictions and Giovanni's driving record. Brent Ecklund then submitted another insurance application to Safeco First National Insurance Company and issued a binder effective July 14, 1990. This application answered "no" to a question of cancellation or non-renewal in the past five years and listed only Jeff's two speeding tickets. Safeco accepted coverage for the Cerises for a total annual premium of \$600.00. However, liability coverage was less than that contained in the initial General Accident policy and the Safeco policy did not include any comprehensive, collision or glass coverage. The initial General Accident policy which had been cancelled on April 2, 1990 had a six-month premium of \$472.00 but for greater liability, collision and comprehensive coverage.

14. Placing automobile coverage for drivers with several moving traffic violations and/or accidents is difficult because carriers do not want to assume the risks involved.

ROGER HOFFHEIN

15. Roger Hoffhein was Brent Ecklund's neighbor in Robbinsdale in the spring of 1989 and they knew each other before the subject of insurance was discussed. In September of 1989, Mr. Hoffhein met with Ecklund to discuss insurance for his automobile. Hoffhein's girlfriend, Glenda Kaufman, gave Mr. Ecklund a check for \$400.00 dated September 13, 1989, as the first payment for the insurance policy. The application filled out was submitted to Ohio

Casualty Insurance Company by Ecklund, however, the company never received the application. Mr. Ecklund had sent the application to the wrong processing location. After a policy had not been issued for over a month, Ecklund called Ohio Casualty and they informed him that no application had ever been received. Consequently, Ecklund contacted Mr. Hoffhein and another application was prepared for Ohio Casualty and a binder issued effective November 1, 1989. At that time, Roger Hoffhein was only 24 years old, and, pursuant to the insurance company's underwriting guidelines, did not qualify for coverage.



16. In mid-November 1989, Ohio Casualty notified both Hoffhein and Brent Ecklund that it was cancelling Hoffhein's automobile insurance coverage effective November 30, 1989 on the grounds that Hoffhein was 24 years old, single, and did not have any "support coverage".

17. Brent Ecklund then submitted an application for insurance on behalf of Roger Hoffhein to the American Economy Insurance Company with a binder effective December 15, 1989. In this application, Mr. Ecklund checked "no" to the box asking whether any other insurance policy had ever been cancelled within the last three years and did not list Glenda Kaufman as a resident in the household in the driver information box. Rather, Mr. Ecklund listed Ms. Kaufman on the second page of the application as a household resident who was not an operator but who had her own automobile insurance. The "driver information" box on the first page states that the application should "list all licensed operators/residents in household". The date on this binder resulted in a gap in Hoffhein's automobile coverage from November 30, 1989 to December 15, 1989.

18. After reviewing the application submitted by Mr. Ecklund, American Economy issued a notice of cancellation effective February 1, 1990 for the reason that there were other licensed drivers in the household which were not included in the application. The company had an outstanding policy that all licensed drivers in a household must be included as insureds under a policy.

19. Subsequently, on or about April 2, 1990, Brent Ecklund prepared and submitted, on behalf of Hoffhein, a second automobile insurance application with American Economy and issued a binder effective April 14, 1990. Although the two previously referenced applications had been rejected by Ohio Casualty and American Economy, the question of whether any insurance had been cancelled or declined in the past three years was answered in the negative on the application. Glenda Kaufman was, however, listed as a licensed operator in the household on this application. The effective date of this binder for coverage with American Economy resulted in a gap in coverage for Mr. Hoffhein from February 1, 1990 through April 14, 1990.

20. Throughout the above-referenced automobile insurance application and cancellation process, Mr. Hoffhein received inquiries from Mobil Oil Federal Credit Union concerning automobile insurance coverage on Hoffhein's automobile which they financed. Because the Credit Union would not accept a binder as proof of coverage, they secured insurance for the automobile and billed Hoffhein for the premiums required for the coverage. During certain periods of time, Mr. Hoffhein was doubly insured and paid for the two policies.

21. A binder was issued on August 30, 1990 which purported to insure Mr. Hoffhein with American Casualty effective September 13, 1989 through November 1, 1989. This binder was issued approximately one year after the September 13, 1989 insurance application which Ohio Casualty never received.

22. On December 12, 1989, Brent Ecklund sent a letter to the Minnesota Department of Public Safety stating that he had insured Roger Hoffhein with Ohio Casualty from October 1, 1989 through December 15, 1989. This letter was later corrected by Mr. Ecklund after the mistake was discovered.

ROBERT KREUSCHER

23. Robert Kreuscher first obtained insurance coverage with Brent Ecklund in the mid-1980s when Ecklund was with American Family. At that time, Ecklund did a satisfactory job for Mr. Kreuscher, however, when Ecklund left American Family, Kreuscher's policies were assigned to a different agent. Approximately two years after Ecklund left American Family, he spoke with Robert Kreuscher about obtaining different automobile coverage because Kreuscher had been informed that American Family would not renew his policy. American Family had sent Mr. Kreuscher an advance termination notice dated April 24, 1990 listing three accidents Robert Kreuscher had been involved in and one accident that his daughter, Amber, had been involved in as reasons for the non-renewal. In addition to Robert and his wife, Lorraine, Amber and a son Randy, both drivers, lived in the home.

24. On September 17, 1990, Brent Ecklund filled out an application for automobile insurance on behalf of Robert and Lorraine Kreuscher and then went to their home to have them sign it. Mr. Ecklund did not list Amber and Randy as licensed operators/residents in the household as required by the application form and checked "no" to the question of whether any insurance policy had not been renewed. Mr. Ecklund did not issue a binder at that time or obtain any payment from Mr. Kreuscher. This application was to the Ohio Casualty Insurance Company.

25. At this time, Brent Ecklund's suspension was about to go into effect and he gave the application to Rick Aune to issue a binder and process.

26. In early November 1990, Mr. Kreuscher contacted Insure America and inquired about his September 17, 1990 Ohio Casualty insurance application. Rick Aune found a copy of Kreuscher's application and after contacting the insurance company, determined that the application either had not been sent or, if sent, not received.

CHARLES.MUDGE AND MART JANE MILLS

27. Chuck Mudge and Mary Jane Mills lived together in the same household but were unmarried. Ms. Mills owned a 1987 Dodge Colt and Mr. Mudge owned a 1990 Hyundai Excel which were both insured under a State Farm automobile insurance policy. In June of 1991, Mr. Mudge received a notice from State Farm informing him of the company's intent to not renew their automobile insurance effective September 4, 1991 due to their driving records. This notice showed that Ms. Mills had a February 1990 speeding ticket and was

involved in an "accident over \$500" in April of 1991. In addition, the notice showed that Mr. Mudge was involved in an "accident over \$500" in December of 1989 and had two speeding tickets dated June 1990 and November 1989. Because Brent Ecklund had already provided business liability coverage for Mudge and Mills, they talked to him about changing insurers for automobile coverage.

28. On August 28, 1991, Mr. Ecklund met with Mudge and Mills at their home and prepared an application for automobile insurance with the Metropolitan Property & Casualty Insurance Company. A binder was issued effective August 28, 1991. At that time, Mr. Ecklund was aware that the couple was being cancelled by State Farm and that each had bad driving records. Mr. Ecklund did not list any accidents or violations on the application and checked "no" to the question of whether insurance coverage had

been cancelled within the past five years. At that time, Charles Mudge signed a cancellation request instructing State Farm to cancel his auto policy effective September 1, 1991. Mr. Ecklund mailed this form to State Farm on August 29, 1991. However, Mr. Mudge had second thoughts about the cancellation because he wanted to retain the coverage on the Hyundai in case he needed it. So, he called Mr. Ecklund and told him not to process the cancellation, but it had already been mailed in.

29. On September 20, 1991, Metropolitan mailed a notice of cancellation to Mr. Mudge and Ms. Mills, informing them that their automobile coverage would be cancelled effective October 3, 1991. The reasons listed for the cancellation were the driving records of both of the insureds. Consequently, Mr. Ecklund determined that he should attempt to secure insurance coverage for Mr. Mudge and Ms. Mills separately. On October 3, 1991, an application was submitted to Milbank Select for Ms. Mills and the Dodge Colt. A binder was issued effective October 3, 1991. Only Ms. Mills was listed in the driver information on this sheet although Chuck Mudge was listed on the second page of the application with a note that he had his own car and insurance.

30. On October 7, 1991, Ecklund issued a binder to Chuck Mudge after an application for car insurance was filled out and submitted to the Mendota Insurance Company. Mr. Mudge was listed as the only insured on the application although the application stated clearly that all residents of the household 14 years of age or older must be listed. Additionally, Mendota Insurance Company underwriting guidelines require the listing of all residents in the household who are licensed drivers. The binder effective October 7, 1991 resulted in a gap in Mr. Mudge's automobile insurance coverage from October 3 through October 7.

31. The Mendota Insurance Company informed Mr. Mudge and Mr. Ecklund that the automobile insurance coverage bound on October 7 would be cancelled effective November 1, 1991 due to the driving records of both Mr. Mudge and Mary Jane Mills. On October 24, 1991, the Milbank Insurance Company informed Ms. Mills and Mr. Ecklund that the automobile insurance coverage bound October 3, 1991 would be cancelled effective November 6, 1991. The reasons

listed for the cancellation were the driving records of both Ms. Mills and Mr. Mudge.

32. On October 1, 1991, Brent Ecklund had given Ms. Mills a quote for automobile insurance through Milbank Insurance Company. This quote listed a September 1, 1990 speeding violation. On the October 3, 1991 application to Milbank filled out by Ecklund for Ms. Mills, the September 1, 1990 speeding violation was omitted.

33. Both Mr. Mudge and Ms. Mills were later able to obtain insurance with Allstate Insurance Company.

#### NOTICE OF AND\_ORDER FOR HEARING

34. On March 11, 1992, after the investigation of complaints filed herein, the Commissioner of Commerce, State of Minnesota, issued a Notice of and Order for Hearing and Order to Show Cause containing five counts alleging

activities by Brent 2 Ecklund which constitute violations of Minnesota insurance statutes and rules.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Commerce have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and 60A.17, subd. 6d. (1990). The Notice of Hearing was proper in all respects and the Department has complied with all substantive and procedural requirements of law and rule.

2. The Minnesota Department of Commerce has the burden of proof to show, by a preponderance of the evidence, that the Licensee violated the Minnesota statutes and rules set forth below.

3. Minn. Stat. 60A.17, subd. 1a(e) states, in part that "every licensed agent shall notify the Commissioner within thirty days of any change of name, address, or information contained in the application." The Judge has concluded that the Department proved a violation of this statutory provision due to Mr. Ecklund's failure to notify it of the lawsuit by American Family and the surrender of his Wisconsin license.

4. Minn. Stat. 60A.17, subd. 6c(a)(2), (3), (6) and (9) permits the Commissioner to suspend or revoke an insurance agent's license or to impose a civil penalty appropriate to the office, not to exceed \$5,000.00 upon that licensee, or both, if, after notice and hearing, then Commissioner finds as to that licensee any one or more of the following conditions:

- (2) Any cause for which issuance of a license could have been refused had it been existed and been known to the Commissioner at the time of the issuance;
- (3) Violation of, or noncompliance with, any insurance law or violation of any rule or order of the Commissioner or of a Commissioner of insurance of another state or jurisdiction;
- (6) Misrepresentation of the terms of any actual or proposed insurance contract; and
- (9) That in the conduct of the agent's affairs under the license,

the licensee has used fraudulent, coercive or dishonest practices, or the licensee has been shown to be incompetent, untrustworthy, or financially irresponsible.

2In its post-hearing submission, the Department argues that Mr. Ecklund violated Minn. Stat. 60A.17, subd. 1(a) because he sold insurance before he was licensed on October 8, 1985. (see Finding 2). However, this allegation was not contained in the Department's "pleadings" and no motion to amend was made pursuant to Minn. Rule 1400.5600, subp. 5. Consequently, this charge will not be addressed further herein.



The Judge has concluded that the course of conduct proved by the Department with respect to Mr. Ecklund's failure to include traffic violations and accidents on insurance applications and disclose that the applicant had been cancelled, declined or not renewed by another insurance company constitutes incompetence within the meaning of (9) above. Mr. Ecklund's failure to find insurance for clients whose policies or binders had been cancelled so there was no gap in coverage constitutes incompetency and untrustworthiness within the meaning of (9) above. Mr. Ecklund's failure to adhere to insurance company underwriting guidelines which resulted in cancellations as set forth in the Findings constitutes incompetence within the meaning of (9) above. The Judge additionally concludes that the Department has not proved that Mr. Ecklund changed or altered rate classifications on American Family insurance policies in violation of Minnesota statutes or rules.

5. Minn. Stat. 72A.20, subd. 1, in part, makes it unlawful for an insurance agent to make, issue, circulate, or cause to be made, issued or circulated, a statement misrepresenting the terms of any policy issued. The Judge has concluded that the Department did not prove a violation of this statutory provision.

6. Minn. Stat. 72A.20, subd. 18(b) prohibits an insurance agent from engaging in fraudulent, coercive, or dishonest practices in connection with the insurance business. The Judge has concluded that the Department has not proved a violation of this statutory provision.

7. Minn. Rule 2795.1000 provides that every insurance agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business. This rule has been violated due to the violations set forth above in Conclusion 4.

8. The Conclusions above are made for the reasons set forth in the Memorandum below.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take disciplinary action against Brent Ecklund's insurance agent's license consistent with the Conclusions above and Memorandum below.

3Although this rule is very broad, caselaw generally holds that rules need only prescribe general principles so that individuals subject to the rules are "reasonably" able to determine appropriate conduct. In re charges Against N.P., 361 N.W.2d 386, 394 (Minn. 1985). The Judge finds that this standard has been met with respect to the more specific violations of statute found.

Dated this day of August, 1992.

PETER C. ERICKSON  
Administrative Law Judge

Reported: Taped, No Transcript Prepared.

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The law is clear that the burden of proof which must be met by the Department herein is preponderance of the evidence. See, In the Matter of the Insurance Agent, ' Licenses of David S. Kapp, 473 N.W.2d 869, 874 (Minn. App 1991). However, the Minnesota Supreme Court has mandated that in professional license disciplinary proceedings, additional factors must be considered. IN re Wang, 441 N.W.2d 488 (Minn. 1989). In Wang, an action brought by the Board of Dentistry against a dentist, the court stated:

[T]hese proceedings brought on behalf of the state, attacking a person's professional and personal reputation and character and seeking to impose disciplinary sanctions, are no ordinary proceedings. We trust that in all professional disciplinary matters the finder of fact, bearing in mind the gravity of the decision to be made, will be persuaded only by evidence with heft. Id. at 492 (emphasis added).

The Judge has attempted to apply the above-standard in this case.

The record is clear in this matter that Brent Ecklund filled out insurance applications in which he: (1) failed to disclose traffic tickets and accidents about which he was aware (Cireses, Mudge and Mills); checked "no" to the question of whether the applicant had had an insurance policy not renewed, declined or cancelled within the recent past when he knew that that had happened (Cireses, Hoffhein, Kreuscher, Mudge and Mills); declined to follow underwriting guidelines (Hoffhein); failed to act timely so that gaps in insurance coverage occurred (Cireses, Hoffhein, Mudge); and failed to list all licensed drivers in the household despite an insurance company and

application requirement that he do so (Hoffhein and Kaufman, Kreuscher, Mudge and Mills). Mr. Ecklund admitted during his testimony that he had failed to disclose on several applications that the applicant had had a policy cancellation, been not renewed, or been declined coverage in the recent past. He explained, however, that this happened due to his "haste" in filling out the applications. The Judge has concluded that the above-referenced conduct

constitutes incompetency and untrustworthiness within the meaning of Minn. Stat. 60A.17, subd. 6c(a)(9) and is grounds to take disciplinary action against Brent Ecklund's license.

The Department argues that Brent Ecklund engaged in fraudulent and dishonest practices because he inappropriately changed the automobile insurance rate classifications for his American Family insureds. However, the record does not support this conclusion. The arbitration award issued in this matter does not contain any findings concerning Mr. Ecklund's activities or any explanation concerning the factual basis of the award. The record in this case shows that Mr. Ecklund did change the rate classifications on a large number of automobile policies which he had written. However, Mr. Ecklund testified that this was done after his "supervisor", Mel Hartman, directed each agent to review their policies specifically with reference to the rate classifications. The record further shows that American Family did change the classifications which Mr. Ecklund had previously made to three of his insureds' policies. However, there is no testimony that Mr. Ecklund had not spoken with these insureds or that the change made by Ecklund was not a mistake or appropriate at the time it was made. The evidence concerning this allegation does not meet the standard imposed by Wang, *supra* 5.

The application for licensure submitted by Mr. Ecklund (Exhibit 42) asks questions concerning whether action against an occupational license has been taken against him in another jurisdiction and whether the applicant had ever been a defendant in an action alleging a breach of fiduciary duty. Mr. Ecklund answered no to these questions at the time the application was filled out in late September 1985. Minn. Stat. 60A.17, subd. 1a(e) mandates that a licensed agent must notify the Commissioner within 30 days of any change of "information" contained in the application. Mr. Ecklund testified herein that he called somebody at the Commerce Department when he surrendered his license to the State of Wisconsin and instructed his attorney to notify the State when

4The Respondent has taken a "no harm-no foul" approach to these allegations, arguing that because no policyholders or applicants were damaged, no statutory violations should be found. The Judge has rejected that analysis. Monetary loss was proved by the Department for some individuals and gaps of coverage existed for some which created exposure. Most importantly, however, is the fact that the statutes and rules are designed, in large part, to regulate the business practices of insurance agents without regard to actual damage done to individuals. It is obviously in the public interest

that all insurance agents conduct their business affairs in a manner which will not expose those with whom they deal to any likelihood of damage. The issue of damages resulting from inappropriate conduct by an insurance agent is primarily one for civil actions in district court.

5The Department attempted to impeach Mr. Ecklund by offering a portion of his deposition testimony in the American Family lawsuit into the record. This testimony contains an admission by Ecklund that he "changed the class codes" on insurance policies pursuant to Mel Hartman's request. However, the record in this case does not contain sufficient evidence to support the charge alleged by the Department.

he was sued for breach of fiduciary duty. The Judge has concluded that this testimony is only an after-the-fact explanation to avoid culpability. Consequently, the Judge has concluded that Mr. Ecklund violated the above-referenced statute by failing to notify the Department of Commerce when he surrendered his license to the State of Wisconsin and was sued by American Family for breach of fiduciary duty.

P.C.E.